Human Rights

EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

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50th Anniversary of the Universal Declaration of Human Rights 1948-1998

Introduction

"*Everyone has the right to life, liberty and security of person.*"
(UNIVERSAL DECLARATION OF HUMAN RIGHTS)

(*Every human being has the inherent right to life. This right shall be protected by law.*)

"*No one shall be arbitrarily deprived of his life.*"
(INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS)

It is recognized that the right to life is the most fundamental and basic of human rights. Indeed, the right to life is the fountain from which all the other human rights spring and it therefore deserves the greatest respect. With the end of the world wars and the beginning of the process of decolonization, the international community laid the foundation for the promotion and protection of human rights by proclaiming the Universal Declaration of Human Rights. Recognizing the "inherent dignity" and the "equal and inalienable rights of all members of the human family", the General Assembly of the United Nations enshrined the right to life in article 3 of the Universal Declaration, which states that "everyone has the right to life, liberty and security of person".

The Universal Declaration was thus a first and crucial step towards a steadily increasing protection of human rights, including the right to life, within the United Nations. The right to life was subsequently entrenched in the International Covenant on Civil and Political Rights, article 6 of which reiterates that "every human being has the inherent right to life". The provision continues by stating that "this right shall be protected by law" and that "no one shall be arbitrarily deprived of his life".

As a result of these developments, the promotion and protection of the right to life, as guaranteed in several international instruments, is no longer considered to be a matter exclusively within the domestic jurisdiction of a State, but a matter of international concern. States have to ensure that their organs respect the life of persons within their jurisdiction.

On several occasions, the General Assembly has pointed out particular aspects of the right to life. In resolution 2993 (XXIII) of 26 November 1968, the Assembly invited Governments to ensure that in countries where the death penalty could be imposed, persons accused of capital crimes were given the benefit of the most careful legal procedures and the greatest possible safeguards.

In 1980 the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders condemned "the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups" acting with the support, tacit or otherwise, of official forces or agencies.[1]

The General Assembly, alarmed at the incidence of summary and arbitrary executions in different parts of the world, and concerned at the occurrence of politically motivated killings, adopted resolution 35/172 of 15 December 1980 in which it urged Member States to respect as a minimum standard the content of the provisions of articles 6, 14 and 15 of the International Covenant on Civil and Political Rights which cover the right to life and various safeguards guaranteeing fair and impartial judicial proceedings.

As an increasing number of incidents of politically motivated executions and killings were reported, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which until the beginning of the 1980s had linked summary executions with the practice of enforced or involuntary disappearances, decided to treat the former as a separate issue and brought its concern before the Commission on Human Rights in 1982.

The Special Rapporteur on extrajudicial, summary or arbitrary executions

An important development which reflected the growing interest of the international community to fight the abhorrent practice of sum-

[1] See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Caracas, 25 August-5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B, resolution 5.

mary or arbitrary execution was the appointment of an independent expert to serve as a special rapporteur to the Commission on Human Rights. It was the first appointment of a person to study a particular type of human rights violation on a worldwide basis.

Following pertinent suggestions by its Sub-Commission, the Commission on Human Rights, in resolution 1982/29 of 11 March 1982, recommended that the Economic and Social Council should request the Chairman of the Commission to appoint an individual of recognized international standing as Special Rapporteur to submit a comprehensive report to the Commission on the occurrence of "summary and arbitrary" executions. The Council established the mandate on summary and arbitrary executions in its resolution 1982/35 of 7 May 1982 and Mr. S. Amos Wako of Kenya, a lawyer and founding Secretary-General of the Inter-African Union of Lawyers, was appointed Special Rapporteur. The mandate was regularly renewed. In 1992, Mr. Wako resigned and Mr. Bacre Waly Ndiaye, a lawyer from Senegal, also a founding member of the Inter-African Union of Lawyers and former Vice-President of the International Executive Committee of Amnesty International was appointed. In the same year, the title of the mandate was changed by the Commission to "extrajudicial, summary, or arbitrary executions". The change indicated that the members of the Commission had adopted a broader approach to the mandate on executions to include all violations of the right to life as guaranteed by the relevant international instruments.

Within the United Nations human rights machinery, the mandate on extrajudicial, summary or arbitrary executions falls into the category of thematic mechanisms of the Commission on Human Rights. Thematic mechanisms deal with violations of a certain type occurring on a worldwide scale, rather than with general human rights situations in particular countries.[2] They have been introduced in response to the increasing number of individual cases of human rights violations of certain types, occurring in different parts of the world, that are reported to the Secretariat of the United Nations. Since the mandate on extrajudicial, summary or arbitrary executions is not established by treaty, but has its legal basis in resolutions of organs of the United Nations, it has also been described as an extra-conventional or Charter-based procedure. In his work the Special Rapporteur is assisted by the Activities

[2] The first thematic mechanism to be established by the Commission on Human Rights was the Working Group on Enforced and Involuntary Disappearances which was set up in 1980. Other examples of thematic mechanisms are the Special Rapporteur on the question of torture, the Special Rapporteur on religious intolerance, the Special Rapporteur on violence against women and the Working Group on Arbitrary Detention.

and Programmes Branch at the Office of the High Commissioner for Human Rights which is located at the United Nations Office at Geneva.

The mandate of the Special Rapporteur

The mandate of the Special Rapporteur is defined by the Commission on Human Rights in its annual resolutions on extrajudicial, summary or arbitrary executions. Most recently the Commission, in its resolution 1997/61, requested the Special Rapporteur, in carrying out his mandate:

(*a*) To continue to examine situations of extrajudicial, summary or arbitrary executions;

(*b*) To respond effectively to information which comes before him, in particular when an extrajudicial, summary or arbitrary execution is imminent or seriously threatened or when such an execution has occurred;

(*c*) To enhance further his dialogue with Governments;

(*d*) To continue to pay special attention to extrajudicial, summary or arbitrary executions of children and women and to allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public manifestations or against persons belonging to minorities;

(*e*) To pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals who are carrying out peaceful activities in defence of human rights and fundamental freedoms;

(*f*) To continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto;

(*g*) To apply a gender perspective in his work.

The "situations of extrajudicial, summary or arbitrary execution" which the Special Rapporteur is requested to examine include all acts and omissions of State representatives that constitute a violation of the general recognition of the right to life embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.[3] These international legal standards, which are universal, are the main substantive legal basis of the work of the Special Rapporteur. This framework is complemented by a number of other treaties and resolutions adopted by United Nations bodies, among them, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[4] the Safeguards guaranteeing protection of the rights of those facing the death penalty,[5] the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions[6] and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[7]

How does the Special Rapporteur work?

The Special Rapporteur discharges his mandate mainly on the basis of information brought to his attention by non-governmental organizations, Governments, individuals and intergovernmental organizations.[8] Communications received by the Special Rapporteur contain specific cases of alleged extrajudicial, summary or arbitrary execu-

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[3] While his mandate only authorizes the Special Rapporteur to examine killings falling into the Government's sphere, he has repeatedly expressed his concern over the loss of life caused by actions of non-State actors. The Special Rapporteur has been requested by the Commission on Human Rights to pay attention to this issue. See, e.g. resolution 1992/42 on consequences on the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers.

[4] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. See *Report by the Secretariat*, United Nations publication, Sales No. E.91.IV.2, chap. I, sect. B.

[5] ECOSOC resolution 1984/50 of 25 May 1984.

[6] ECOSOC resolution 1989/65 of 24 May 1989. In paragraph 1 of the resolution, the Council recommended that the Principles be taken into account and respected by Governments, within the framework of their national legislation and practice.

[7] General Assembly resolution 40/34 of 29 November 1985.

[8] A comprehensive account of the methods of work of the Special Rapporteur can be found in his 1993 report to the Commission on Human Rights (E/CN.4/1993/46).

tions, death threats, and/or general information about issues related to the right to life. All information received is examined and analysed by the Special Rapporteur. Where there are no serious grounds to believe that the information provided by the source is not credible, the Special Rapporteur transmits the allegations to the Government concerned.

Urgent appeals

In cases which the Special Rapporteur fears present a possibility of imminent extrajudicial, summary or arbitrary executions, he may transmit urgent appeals to a Government. Such cases include death threats and fear of imminent execution of death sentences in contravention of the limitations on capital punishment set forth in the pertinent international instruments. This fear is sometimes based on alleged violations of the right to life which have already been committed. The Special Rapporteur may also send urgent appeals to Governments after having been informed of the imminent expulsion of persons to a country or to a place where their lives are at risk.

In an urgent appeal the Special Rapporteur requests the Government concerned to ensure effective protection of those under threat or at risk of extrajudicial, summary or arbitrary execution. He also urges the competent authorities to undertake full, independent and impartial investigations with respect to violations of the right to life and to adopt all necessary measures to prevent further violations of the right to life. The Special Rapporteur further requests that he be informed of all steps taken in these matters.

The aim of urgent appeals is to prevent loss of life. Consequently, the Special Rapporteur transmits allegations of imminent extrajudicial, summary or arbitrary executions regardless of whether domestic remedies have been exhausted.

Between 20 July 1992 and 1 September 1996, the Special Rapporteur transmitted 818 urgent appeals on behalf of more than 6,500 persons, as well as on behalf of groups of persons, including members of certain families, indigenous communities, groups of refugees, internally displaced persons and the civilian population in various conflict areas. Since 1995, the Special Rapporteur has sent urgent appeals jointly with other Special Rapporteurs or Working Groups of the Commission on Human Rights when the relevant issues fell within the realm of more than one thematic mechanism.

Other allegations

Alleged cases of extrajudicial, summary or arbitrary executions which do not require the Special Rapporteur to take immediate action are transmitted to the Government in the form of case summaries accompanied by letters requesting Governments to provide the Special Rapporteur with information in response to specific questions which concern the progress and results of investigations conducted, penal or disciplinary sanctions imposed on the perpetrators, compensation provided to the family of the victims, as well as with any other pertinent comments or observations. The list of questions to which Governments are requested to reply are reproduced in the annex to this Fact Sheet.

Allegations of a general nature, such as reports about persistent impunity or about legislation alleged to be in contravention of restrictions on the application of capital punishment contained in pertinent international instruments, are also transmitted to Governments. In this connection, the Special Rapporteur requests clarification of the substance of the allegations and/or more specific information, such as legal texts and other relevant documents.

Government replies and follow-up communications

Replies from Governments in response to the Special Rapporteur's inquiries range from detailed information on the cases reported to brief replies which do not touch upon the main concerns of the Special Rapporteur. While an increasing number of Governments cooperate with the Special Rapporteur by responding to his inquiries, many of his communications remain unanswered, despite the adoption by the Commission on Human Rights of resolutions urging Governments to cooperate with the mandate.

In 1992, the Commission on Human Rights requested the Special Rapporteur to follow up on allegations of extrajudicial, summary or arbitrary executions. The Special Rapporteur duly sent follow-up communications to numerous Governments with respect to transmitted allegations for which no reply had been received or for which replies had been received but which could not be considered satisfactory. The latter included those which were too general, those which indicated that investigations had not yet been completed and those which

indicated that the cases had been closed for lack of evidence, or those in which Governments argued that the allegations were factually incorrect. The Special Rapporteur believes that follow-up efforts should focus in particular on how Governments comply with their obligation under international law to conduct full, independent and impartial investigations into all allegations of extrajudicial, summary or arbitrary executions transmitted to them, with a view to clarifying the circumstances, identifying and prosecuting those responsible, granting compensation to the victims or their families, and preventing future violations.

The Special Rapporteur also sends follow-up letters to sources of allegations informing them of the contents of Government replies to cases they have submitted. In these letters, the Special Rapporteur requests that the sources provide him with additional comments or observations. In cases where the reply from a source contradicts the Government's response, the Special Rapporteur also sends a follow-up communication to the Government requesting that it provide him with additional information.

Country visits

On-site visits are another essential component of the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions. The aim of such visits is to obtain first-hand information on the situation of the right to life in the countries visited, to report on his findings and to propose, in a spirit of cooperation and assistance, recommendations to improve situations identified as matters of concern.

Between 1992 and 1995, the Special Rapporteur conducted visits to the territory of the former Yugoslavia, Peru, Rwanda, Indonesia and East Timor, Colombia, Burundi and Papua New Guinea. Some of these visits were undertaken jointly with other Special Rapporteurs.

The countries he wishes to visit are selected by the Special Rapporteur primarily on the basis of the number and gravity of allegations and reports he receives concerning violations of the right to life in the given country. In addition, the absence of adequate responses from the Government or recurrent contradictions between information received from the source and the Government may stimulate the Special Rapporteur's interest in visiting a country. The Special Rapporteur has pointed out that an on-site visit does not entail the condemnation of a country; instead, it is seen as an expression of concern and aims at im-

proving his understanding of a particular situation so that he can formulate useful recommendations. Also, visits do not have the character of a judicial inquiry; they cannot replace investigations by the competent judicial authorities.

Other activities

The Special Rapporteur regularly consults with representatives of States and non-governmental organizations, serves as a resource person for seminars and conferences and, if time permits, delivers lectures at universities or other research institutions. Within the United Nations framework, he cooperates in particular with other thematic mechanisms, the Office of the High Commissioner for Human Rights, and the Crime Prevention and Criminal Justice Division of the Secretariat. In addition, the Special Rapporteur issues press releases to inform the general public of his activities and of his concerns in specific country situations.

Reports of the Special Rapporteur

The Special Rapporteur, pursuant to resolutions adopted by the Economic and Social Council and the Commission on Human Rights, has annually submitted a report to the Commission on Human Rights.[9] These reports contain a description of his activities and working methods, summaries of communications between the Special Rapporteur and Governments and, if appropriate, observations on the situation of the right to life in specific countries. Moreover, the Special Rapporteur includes in his report a general analysis of the phenomenon of extrajudicial, summary or arbitrary executions, as well as conclusions and recommendations in this respect. The report is publicly discussed by the Commission on Human Rights at its annual session, a discussion in which representatives of both Governments and non-governmental organizations actively participate and which so far has always led to the adoption of a resolution on the subject. In 1996, for the first time,

[9] The four latest reports of the Special Rapporteur to the Commission are contained in documents E/CN.4/1997/60 and Add.1, E/CN.4/1996/4 and Add.1-2 and Corr.1, E/CN.4/1995/6 and Add.1, and E/CN.4/1994/7 and Add.1-2 and Corr.1-2.

the Commission invited the Special Rapporteur to submit a report to the General Assembly on the situation worldwide with regard to summary or arbitrary executions and his recommendations to combat the phenomenon.[10]

It should be noted that allegations transmitted by the Special Rapporteur, which are subsequently reflected in his reports, are only approximate indications of the occurrence of violations of the right to life worldwide. The availability of information on any country clearly depends on the degree of freedom granted by Governments to human rights activists, as well as on the latter's level of organization. As a consequence, the Special Rapporteur continues to find himself in a situation where for some countries the information brought to his attention is very complete, while other countries do not figure at all in his reports to the Commission because no information has been received, or the communications brought to his attention are not sufficiently specific to allow them to be processed within the framework of his mandate.

Situations upon which the Special Rapporteur takes action

The Special Rapporteur considers violations of the right to life committed by authorities of the State, such as the police, security forces and armed forces, as well as by other groups or individuals cooperating with or tolerated by the State. He also takes action when the judiciary imposes a death sentence in contravention of international guarantees and safeguards. The Special Rapporteur has identified the following situations involving violations of the right to life upon which he takes action:

Capital punishment

Since 1993 the Commission on Human Rights has reiterated its request to the Special Rapporteur to pay special attention to violations

[10] Commission on Human Rights resolution 1996/74 of 23 April 1996. The report to the General Assembly is contained in document A/51/457.

of the right to life in connnection with the imposition of the death penalty. In general, the Special Rapporteur undertakes action when laws that are applied or trial proceedings, including the pre-trial stage, fall short of international standards, in particular articles 6, 9 and 14 of the International Covenant on Civil and Political Rights and the Safeguards guaranteeing protection of the rights of those facing the death penalty.

The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial, especially when defendants facing the imposition of capital punishment do not benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must further be presumed innocent until their guilt has been proven beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account. The proceedings must guarantee the right to review both the factual and legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case in first instance. The defendants' right to seek pardon, commutation of sentence or clemency must also be ensured. In addition, he intervenes if the convicted is a juvenile offender, a mentally retarded or insane person, a pregnant woman or a recent mother.

Although capital punishment is not yet prohibited under international law, the desirability of its abolition has been strongly reaffirmed on different occasions by United Nations bodies, among them the General Assembly, the Security Council and the Human Rights Committee. Therefore, the Special Rapporteur closely follows the developments within Member States in this regard and has expressed his concern in cases of extension of the scope or reinstatement of the death penalty.

Death threats

Reports and allegations alerting the Special Rapporteur to situations where the lives and physical integrity of persons are feared to be at risk account for a large part of the information brought to his attention. The transmission of urgent appeals with the aim of preventing loss of life are therefore an essential part of the Special Rapporteur's mandate.

Deaths in custody

The Special Rapporteur also undertakes action in alleged cases of deaths in custody. In this context violations of the right to life occur mainly as a result of torture or other cruel, inhuman or degrading treatment, as well as of neglect, use of force and life-threatening conditions of detention.[11]

Deaths due to the excessive use of force by law enforcement officials

The excessive use of force by police officers and security forces with lethal consequences is another situation falling within the mandate on extrajudicial, summary or arbitrary executions.[12] The Special Rapporteur might intervene when the use of force is not in keeping with the criteria of absolute necessity and proportionality. Special attention is paid to violations of the right to life due to the excessive use of force by law enforcement officials in the context of demonstrations and other peaceful assemblies.

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[11] In this context the Special Rapporteur considers article 5 of the *Universal Declaration on Human Rights* and article 7 of the *International Covenant on Civil and Political Rights*. In addition, the Special Rapporteur takes into account the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution 3452 (XXX) of 9 December 1975), *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution 39/46 of 10 December 1984), principles 15 and 16 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, article 3 of the *Code of Conduct for Law Enforcement Officials* (General Assembly resolution 34/169 of 17 December 1979), the *Standard Minimum Rules for the Treatment of Prisoners* (ECOSOC resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), the *Basic Principles for the Treatment of Prisoners* (General Assembly resolution 45/111 of 14 December 1990), the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (General Assembly resolution 43/173 of 9 December 1988), rules 13.5 and 27.1 of the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules, General Assembly resolution 40/33 of 29 November 1985), and article 37 of the *Convention on the Rights of the Child* (General Assembly resolution 44/25 of 20 November 1989).

[12] The main instrument taken into consideration in such cases is the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Principles 12 and 14 are of particular relevance in the context of peaceful and lawful demonstrations or other assemblies. Article 3 of the *Code of Conduct for Law Enforcement Officials* deals with the principles of necessity and proportionality.

Deaths due to attacks by security forces of the State, paramilitary groups or private forces

The Special Rapporteur might act upon reports of killings committed by security forces of the State, paramilitary groups, civil defence forces or other private forces cooperating with or tolerated by the Government.[13] These groups operate outside the public military and police forces, but are deemed to be State agents because they are often set up and supervised by the authorities to operate in situations of internal conflict or disturbance.

Violations of the right to life during armed conflict

Despite the fact that the lives of civilians and combatants who are injured or have laid down their arms are protected by international humanitarian law, violations of the right to life continue to occur on a large scale in the context of armed conflicts, including internal armed conflicts.[14] The Special Rapporteur may take action, for example, when civilians are killed by indiscriminate shelling or deliberate execution, or die as a consequence of being denied access to water, food or medical supplies. He may also take preventive action through the transmission of urgent appeals.

Genocide

The Special Rapporteur may also act in situations of genocide. The crime of genocide is defined in the Convention on the Prevention and Punishment of the Crime of Genocide[15] as the killing of members of a national, ethnic, racial or religious group with the intent to destroy

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[13] The Commission on Human Rights, in its resolution 1994/67, invited the special rapporteurs to pay due attention to the matter of civil defence forces in relation to the protection of human rights and fundamental freedoms (paragraph 3).

[14] In considering and acting on such cases the Special Rapporteur takes into account the *Geneva Conventions* of 12 August 1949 and the *Additional Protocols* thereto of 1977. Of particular relevance is common article 3 of the *Geneva Conventions*, article 51 of *Additional Protocol I* and article 13 of *Additional Protocol II*.

[15] General Assembly resolution 260 A (III) of 9 December 1948.

this group as a whole or in part. The Special Rapporteur may take action either on behalf of individual victims or may draw the attention of the national authorities as well as international bodies and institutions, including the High Commissioner for Human Rights, to situations or imminent situations of genocide.

Imminent expulsion of persons to a country where their lives are in danger

The Special Rapporteur also considers information on allegations concerning the imminent expulsion, refoulement or return of persons to a country or a place where their lives are in danger as well as concerning the closure of national borders so as to prevent persons seeking asylum from leaving the country where their lives are in danger.[16]

Impunity

The Special Rapporteur has noted that impunity continues to be the principal cause of the perpetuation of human rights violations, and particularly of extrajudicial, summary or arbitrary executions. It is the obligation of Governments to carry out exhaustive and impartial investigations into all allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, and to take effective measures to avoid recurrence of such violations.[17] Therefore, the Spe-

[16] Action of the Special Rapporteur in such cases is based on the right to asylum as provided by the *Universal Declaration of Human Rights* (art. 14) and the principle of non-refoulement which prohibits, *inter alia*, the forcible return of a person to a territory where her or his life would be threatened on account of her or his race, religion, nationality or membership of a particular social group or political opinion. The principle of non-refoulement is laid down in article 33 of the 1951 *Convention relating to the Status of Refugees*. Also of relevance in this connection is principle 5 of the *Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions*, which provides that "no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extralegal, arbitrary or summary execution in that country".

[17] In this connection the Special Rapporteur draws on principles 9 to 19 of the *Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions* and principle 7 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. See also the *Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions* (United Nations publication, Sales No. E.91.IV.1) and the *Guidelines for the conduct of United Nations inquiries into allegations of massacres* (United Nations Office of Legal Affairs, 1995).

cial Rapporteur considers and takes action upon information on alleged cases of non-compliance with this obligation. He regularly urges national authorities to prosecute and punish perpetrators in accordance with the law. In addition, the Special Rapporteur pays attention to national amnesty laws which may lead to impunity.

Rights of victims

Victims of extrajudicial, summary or arbitrary executions should receive an adequate compensation from the State when the violation of the right to life was committed by a public official or other agents acting in an official or quasi-official capacity.[18] The right of victims or their families to receive adequate compensation is both a recognition of the State's responsibility for the acts committed by its personnel and an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to conduct investigations into allegations of human rights abuses with a view to identifying and prosecuting their alleged perpetrators. Financial or other compensation provided to the victims or their families before such investigations are initiated or concluded, however, does not exempt Governments from this obligation.

Some findings of the Special Rapporteur

In his 1996 report to the General Assembly and 1997 report to the Commission on Human Rights, the Special Rapporteur concluded that there was no indication that the number of extrajudicial, summary or arbitrary executions was decreasing. One of the most prevalent targets of extrajudicial, summary or arbitrary executions continued to be persons involved in struggles to secure land rights, to prevent or combat racial, ethnic or religious discrimination or to secure respect for their

[18] See principles 2, 6, 11, 18 and 19 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*

social, cultural, economic, civil and political rights. Women, children, the elderly and the sick were not spared. Even persons forced into exile and the internally displaced were not exempt.

In the same reports, the Special Rapporteur identified a number of factors that have tended to aggravate the phenomenon of extrajudicial, summary or arbitrary executions. In that connection the Special Rapporteur mentioned that the inability of certain States to face social problems, particularly those linked to rapid urbanization and growing poverty, has provoked an increase in the application of the death penalty, especially with respect to the poor and members of minority groups. In addition, the centrifugal forces at play on the international scene since the end of the cold war have in some instances put peoples' identity at the centre of struggles aiming at the creation of States confined within the interest parameters of a single ethnicity, religion or nationality. This has led in many countries to unrest or civil war which usually causes violations of the right to life. Further, the absence of controls in arms-trafficking and the facility with which funds can be obtained through smuggling and drug-trafficking have facilitated the emergence of guerrillas and have rendered their activities economically profitable. Caught between government and guerrilla forces, left to fend for themselves, some populations have been abandoned by both their Governments and the international community. Finally, the collapse of the judiciary in many States, which has often been linked to a lack of a political will to render justice, has led to impunity and/or to a selective application of justice which results in a cycle of repression and vengeance. Once in place, this cycle draws populations into situations of increasing insecurity and aggravates their already precarious living conditions.

The Special Rapporteur underscores the need to fight impunity, which he considers to be the principal cause of the perpetuation and encouragement of violations of the right to life. Governments should investigate all instances of alleged violations of the right to life, prosecute and punish the perpetrators accordingly and grant adequate compensation to the victims. The Special Rapporteur is also convinced of the necessity for the establishment of a permanent international criminal court with universal jurisdiction over mass violations of human rights and humanitarian law, and the adoption of a convention which would provide domestic courts with international jurisdiction over persons suspected of having committed mass violations of the right to life.

The Special Rapporteur considers that the emphasis must be on prevention of violations of the right to life. Extrajudicial, summary or arbitrary executions can only be prevented if there is a genuine will on

the part of Governments not only to enforce the safeguards and guarantees for the protection of the right to life of every person, but also to strengthen them further. The Special Rapporteur also recommends that the international community concentrates its efforts on the effective prevention of further human rights crises and on the implementation of existing instruments. In addition, he believes that a monitoring mechanism to supervise the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide should be established.

How to bring information or appeals to the attention of the Special Rapporteur

Any individual, group, non-governmental organization, intergovernmental agency or Government who has reliable knowledge of the occurrence of an extrajudicial, summary or arbitrary execution, falling into one or more of the categories outlined on page 10 of this publication can bring the relevant information before the Special Rapporteur.[19] The following information is needed:

(*a*) Information regarding the incident: date; place; description of how the incident occurred; in cases of alleged violations of the right to life in connection with the death penalty, information on shortcomings with regard to fair trial guarantees; in cases of imminent violations of the right to life, the reasons for which the person's life is feared to be at risk; in cases of imminent alleged violations in connection with the death penalty, in addition to the aforementioned information, the appeals submitted;

(*b*) Information regarding the victims of the incident; the number of victims; if known, their name, age, sex, profession and/or activities if related to the (imminent) violation of the right to life;

(*c*) Information regarding the alleged perpetrators: if known, an explanation of the reasons why they are suspected of being responsible; if the perpetrators are not State agents, details about how these forces or individuals relate to the State (e.g. cooperation with State security

[19] Allegations can be brought against any State Member of the United Nations, regardless of whether it is a party to treaties containing standards considered by the Special Rapporteur.

forces including information on chains of command; State connivance with or tolerance of their operations, etc.);

(*d*) Information regarding the source of the allegation: name and full address of the organization or individual submitting the allegation to the Special Rapporteur.

Other information which is of interest to the Special Rapporteur, if available, includes:

(*a*) Additional information regarding the victims of the incident which may help identify them, e.g. their place of residence or origin;

(*b*) Additional information regarding the alleged perpetrators: names, the unit or service to which they belong as well as their rank and functions;

(*c*) Information regarding steps taken by the victims or their families and, in particular, about complaints filed, by whom, and before which organ. If no complaint was filed, information as to why not;

(*d*) Information regarding steps taken by the authorities to investigate the alleged violation of the right to life and/or measures adopted to protect persons under threat as well as to prevent similar incidents in the future, in particular: if complaints were filed, the action taken by the competent organs upon their receipt; the progress and status of investigations at the time of the submission of the allegation; in case the results of the investigation are said to be unsatisfactory, an explanation of why this is so.

More general information relating to the right to life, e.g. on recent legislative developments in regard to capital punishment, on amnesty laws, or reliable information indicating a pattern with regard to impunity, is welcomed by the Special Rapporteur as well. Such information enables him to evaluate better the general situation of the right to life in particular countries.

Any information of interest to the Special Rapporteur on extrajudicial, summary or arbitrary executions should be sent to the following address either by mail or by fax:

Special Rapporteur on extrajudicial, summary or arbitrary executions
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Fax: 41 22 917 0092

ANNEX

List of questions to which Governments are requested to reply in regard to alleged cases of extrajudicial, summary or arbitrary executions

1. Are the facts alleged in the summary of the case accurate? If not, please provide details of the inquiries carried out to refute these allegations.

2. What is the case of death as indicated on the death certificate?

3. Was an autopsy conducted? If so, by whom? What are the results of the autopsy? (Please provide a copy of the complete autopsy report.)

4. Has a complaint, formal or informal, been made on behalf of the victim? If so, who made the complaint and what is the relation of the complainant to the victim? To whom was the complaint made? What action was undertaken upon receipt of the complaint and by whom?

5. Which is the authority responsible for investigating the allegations? Which is the authority responsible for prosecuting the perpetrators?

6. Are any inquiries or judicial or other procedures in connection with the case under way? If so, please provide details of their progress to date and the timetable envisaged for their conclusion. If such inquiries or procedures have been completed, please provide details of the conclusions reached. (Please attach copies of any relevant documents.) Are these conclusions definitive?

7. Has the person alleged to have carried out the extrajudicial, summary or arbitrary execution been identified? To which unit or branch of the police, security forces, armed forces or groups co-operating with them does he/she belong?

8. Have penal or disciplinary sanctions been imposed on the alleged perpetrators? If so, please provide details of the procedures

followed to ascertain the penal or disciplinary responsibility of the perpetrators before imposing such penalties. If no such sanctions have been imposed, why not?

9. If no inquiries have been undertaken, why not? If the inquiries which were undertaken were inconclusive, why so?

10. Has any compensation been provided to the family of the victim? If so, please provide details including the type and the amount of the compensation involved. If no compensation has been provided, why not?

11. Please provide such other information or observations concerning the present case as you consider relevant.

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